

REMARKS

The Examiner has objected to informalities in claims 5 and 30. These claims have been amended to correct the informalities.

The Examiner has rejected claim 20 under 35 U.S.C. §101 as drawn to non-statutory subject matter. Claim 20 has been amended to correct the direct, positive recitation of a human. The claim has been amended to recite that the external support is "adapted to be attached to the tibia" and is now believed to be drawn to statutory subject matter.

The Examiner has rejected claims 1-3 under 35 U.S.C. §102(e) as anticipated by Harwin et al. (U.S. 6,458,135). Enclosed herewith is a Declaration of Donald M. Smucker, one of the co-inventors of the present application setting forth the facts establishing that the invention as set forth in the present patent application was conceived and, at least the article (i.e. the cutting guide, reduced to practice prior to the filing date of the Harwin et al. reference. Accordingly, Harwin et al. is not a valid reference with respect to those claims. Accordingly, it is believed that claims 1-3 and those dependent thereon are in condition for allowance.

The Examiner has rejected claims 11 and 19 under 35 U.S.C. §102(e) as being anticipated by Matsuno et al. (U.S. 6,090,114) but has indicated that the claims dependent thereon would be allowable if rewritten in independent form. Claims 11 and 19 have been cancelled and those claims dependent thereon have been rewritten in independent form.

Forwarded herewith is a Supplemental Information Disclosure Statement setting forth the results of a partial Search Report from the European Patent Office dated November 4, 2003. The partial European Search Report searched only claims 1-10. Based upon such search, it considered U.S. Patent Nos. 5,916,220 and 5,830,216 as a category A (Technological Background) references with respect to only claim 1. Claims 11-29 were not examined because of lack of unity of invention under its regulations. Additionally, claims 30-47 were not examined as they related to method for treatment of the human body by surgery.

It is believed that claim 1 and those dependent thereon as well as other claims are clearly patentable over the new references cited by the European Patent Office. In particular, it is noted that U.S. Patent No. 5,830,216 requires the use of an intra medullary rod 7. In contrast, the cutting guide assembly of the present invention does not require any such intra medullary rod.

Accordingly, reconsideration of the application and allowance of claims 1-10, 12-18, 20-26 and 30-38 are respectfully solicited. The allowance of claims 27-29 and 39-47 is noted with appreciation.

Respectfully submitted,



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